

## ARIZONA STATE, TRIBAL & FEDERAL COURT FORUM

Arizona State Courts Building  
Room #230

Tuesday, October 26, 1999  
10:00 a.m.

The State, Tribal, and Federal Court Forum met at the Arizona State Courts Building in Phoenix, Arizona.

### Members Present

Hon. Michael C. Nelson  
Hon. Leroy S. Bedonie  
Hon. William C. Canby, Jr.  
Hon. Cornelia V. Cruz  
Hon. Neil T. Flores, Sr.  
Hon. Marjorie Grimes  
James R. Redpath  
Hon. William R. Rhodes  
Frederick K. Steiner, Jr.

### Participants

Mary Cleland  
Rich Eric  
Hon. Ronald E. Johnny  
Hon. Kay A. Lewis  
Marie Manson  
Gary L. Thomas

### Members Absent

Hon. Earl Carroll  
Hon. Susan A. Ehrlich  
Hon. Malcolm A. Escalante  
Hon. Sherry Hutt  
Frederic F. Kay  
Hon. Gloria Kindig  
Joseph Lodge  
Hon. Spencer D. Thomas  
Professor Rebecca Tsosie

The meeting was called to order at 10:20 A.M. by Judge Nelson, Chairman.

### Approval of August 4, 1999 Conference Call Meeting Minutes

Minutes approved with no additions, corrections or subtractions.

### Tribal Judgments Rule Petition Update

The Petition has been continued to the Court's next Rules Agenda which will be January 4, 2000. The Court continued the matter so an revised version could be circulated to twenty-two (22) practitioners and academics to comment on need for the rules proposed and the Court's authority to adopt them. David Withey was also asked to provide comments regarding the revised rules.

### QUADRO Federal Legislative Update

The Forum was reminded that this matter involves Federal law that recognizes, for tax purposes, a State Court order that divides a retirement plan in a divorce case, but that does not recognize a Tribal Court order dividing such property. The implications are that litigants in tribal court could have very serious tax consequences if the tribal court's authority to divide the plan is not recognized for tax purposes. The Forum received a resolution by the National American Indian Court Judges Association supporting the Forum's suggested change in federal law to rectify this problem.

The Conference of Chief Justice's State/Tribal Relations Committee considered this matter at its meeting in August.

Committee members present indicated they had not heard this issue raised in their own states. Unfortunately, Chief Justice Zlaket was unable to attend this meeting. Committee members thought tribal members would have the option of filing domestic relations cases either in state court or the tribal court. They suggested that parties requiring the division of tax-exempt retirement plans file their divorce actions in state court. It was also pointed out that not all tribal court judges are lawyers and that these issues are very complex, which may be why Congress did not expressly vest the tribal courts with the authority to divide tax-exempt retirement plans. As the issue did not appear to be a national concern, no motion for action by the Conference of Chief Justices was offered.

The question was raised to members as to how much of a problem this is in Arizona and why it is not coming up in other states. Members agreed there are clearly some cases where jurisdiction is exclusively tribal though this situation does not exist in all states. It was noted that women have become more aware of their rights to the retirement plan. It was also noted that a tribal court order dividing a retirement plan only becomes an issue when a private employer raises it. It is not an issue when an employer, such as a tribe, follows the tribal court order. Most employers may be accepting tribal court orders without recognizing this issue.

Members were advised that the Railroad Retirement Act was amended in the 1980s to address an issue similar to this. Another option suggested for addressing this issue is to request a ruling from the IRS that tribal courts may issue QUADROs or that a state court order recognizing a tribal court order may qualify as a QUADRO.

David Withey reported that he had provided information and discussed this issue with Representative Hayworth's legislative director, Catherine Mottley. She advised that this issue could not be addressed until next session through an amendment to a tax bill. She said she would discuss the matter with Representative Hayworth. The Forum decided to continue to seek legislation. Judge Nelson will send a letter to Representative Hayworth requesting his assistance.

### **State Courts Internet Access Update**

The Forum was advised of the availability of state court forms on the Arizona Supreme Court website at [WWW.Supreme.state.az.us](http://WWW.Supreme.state.az.us). Members interested in modifying state forms for tribal court use may obtain Wordperfect versions of the forms from David Withey. Any tribal courts who wish to make tribal court forms available on the state courts website are welcome to send the forms with a request that they be posted.

### **State, Tribal and Federal Judges Conference**

The state judicial conference has been moved from NAU in Flagstaff, AZ to the Ventana Canyon Resort in Tucson, AZ. UofA Indian legal programs is scheduled to sponsor the conference this year. Judge Nelson will contact staff at the UofA Law School about forming a committee of judges to plan the conference agenda. Judges Grimes, Flores, Cruz, Thomas, Bedonie, Lewis and Nelson volunteered to serve on this committee.

### **Future Meetings**

The next Court Forum meeting is planned for the end of February (25th) or early March (3rd), 2000. It was suggested that the meeting be scheduled to coincide with a conference at Arizona State University West expected to be attended by tribal judges. As decided at the last meeting the Forum will also meet on June 8, 2000 at the judicial conference following the state, tribal and federal judges conference session.

### **Court Forum Issues Identification**

The Forum used an electronic polling system to identify issues of concern for attention by the Forum in the future. Eleven issues were suggested by staff and two issues were suggested at the meeting. The results of the polling are indicated below followed by a composite score for each item which is the difference between the percentage favoring and disfavoring the item. The results indicate that items B, D, E, F, H, K and L are the top seven clear choices. The Forum decided to review these priorities at the next meeting after seeing the complete results.

#### **A. Criminal History Record Information System access for entry and consideration of convictions - use in domestic violence cases and sentencing.**

(1) Strongly favor	25%	=	63%
(2) Somewhat favor	38%		
(3) No opinion	25%	=	50
(4) Somewhat Disfavor	13%		
(5) Strongly Disfavor.		=	-13%

#### **B. On reservation offenses by non-Indians - cooperation among federal, tribal and state authorities.**

(1) Strongly favor	60%	=	100%
(2) Somewhat favor	40%		
(3) No opinion		=	100
(4) Somewhat Disfavor			
(5) Strongly Disfavor.		=	-0%

#### **C. Off reservation offenses by Indians residing on reservation.**

(1) Strongly favor	13%	=	51%
(2) Somewhat favor	38%		
(3) No opinion	38%	=	38
(4) Somewhat Disfavor	13%		
(5) Strongly Disfavor.		=	-13%

#### **D. Enforcement of domestic violence orders of protection and injunctions against harassment.**

(1) Strongly favor	67%	=	78%
(2) Somewhat favor	11%		
(3) No opinion	22%	=	78
(4) Somewhat Disfavor			

(5) Strongly Disfavor.		=	-0%
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**E. Enforcement of child support and other domestic relations orders.**

(1) Strongly favor	67%	=	88%
(2) Somewhat favor	22%		
(3) No opinion	11%	=	88
(4) Somewhat Disfavor			
(5) Strongly Disfavor.		=	-0%

**F. Indian Child Welfare Act effect on state court dependency process and tribal court dependency proceedings.**

(1) Strongly favor	50%	=	88%
(2) Somewhat favor	38%		
(3) No opinion	13%	=	88
(4) Somewhat Disfavor			
(5) Strongly Disfavor.		=	-0%

**G. Service of state process on reservations.**

(1) Strongly favor	25%	=	63%
(2) Somewhat favor	38%		
(3) No opinion	25%	=	50
(4) Somewhat Disfavor			
(5) Strongly Disfavor.	13%	=	-13%

**H. Public/attorney access to and education about tribal courts and tribal laws - publications, web site.**

(1) Strongly favor	50%	=	88%
(2) Somewhat favor	38%		
(3) No opinion	13%	=	88
(4) Somewhat Disfavor			
(5) Strongly Disfavor.		=	-0%

**I. Education of state and federal judges regarding tribal laws and court procedures.**

(1) Strongly favor	13%	=	63%
(2) Somewhat favor	50%		
(3) No opinion		=	25

(4) Somewhat Disfavor	38%		
(5) Strongly Disfavor.		=	-38%

**J. Education of tribal judges regarding state and federal laws and court procedures.**

(1) Strongly favor	25%	=	50%
(2) Somewhat favor	25%		
(3) No opinion	13%	=	12
(4) Somewhat Disfavor	38%		
(5) Strongly Disfavor.		=	-38%

**K. Joint exercise of powers intergovernmental agreements such as cross-deputizing law enforcement officers, probation supervision, and judge pro tempore or visiting judge appointments.**

(1) Strongly favor	88%	=	88%
(2) Somewhat favor			
(3) No opinion	13%	=	88
(4) Somewhat Disfavor			
(5) Strongly Disfavor.		=	-0%

**L. Member Issue #1 - State traffic right of ways on Indian Reservations.**

(1) Strongly favor	57%	=	88%
(2) Somewhat favor	29%		
(3) No opinion		=	74
(4) Somewhat Disfavor	14%		
(5) Strongly Disfavor.		=	-14%

**M. Member Issue #2 - Funding of Tribal Courts Trial and Appellate.**

(1) Strongly favor	25%	=	50%
(2) Somewhat favor	25%		
(3) No opinion	25%	=	25
(4) Somewhat Disfavor	25%		
(5) Strongly Disfavor.		=	-25%

### **Call to the Public and Adjournment**

The Chair called for public comment and adjourned the meeting at about 2:00 P.M.